

UNITED STATES DISTRICT COURT  
FOR DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

-----X  
UNITED STATES OF AMERICA, :  
ex rel, MICHAEL K.DRAKEFORD, :  
 :  
Plaintiff, :  
 :  
v. : No. 3:05-CV-2858-MIP  
 :  
TUOMEY HEALTHCARE SYSTEMS, :  
INC., :  
 :  
Defendant. : Volume 2  
-----X

Washington, D.C.

Tuesday, December 2, 2008

Continued Deposition of

KEVIN G. MCANANEY

a witness, recalled for further examination by  
counsel for Defendant, pursuant to notice and  
agreement of counsel, continuing at approximately  
10:00 a.m., at the law offices of Patton Boggs,  
2445 M Street, NW., Washington, D.C., before  
Teague Gibson of Anderson Court Reporting, notary  
public in and for the District of Columbia, when  
were present on behalf of the respective parties:

National Court Reporters, Inc.  
888.800.9656

1 APPEARANCES:

2 On behalf of Plaintiffs:

3 G. NORMAN ACKER, III, ESQUIRE  
4 United States Department of Justice  
5 Civil Division  
6 601 D Street, NW., Room 9138  
7 Washington, D.C. 20004  
8 (202) 307-0474

6

On behalf of Defendant:

7

8 A. CAMDEN LEWIS, ESQUIRE  
9 Lewis & Babcock  
10 P.O. Box 11208  
11 Columbia, South Carolina 11208  
12 (803) 771-8000

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1	C O N T E N T S	
2	EXAMINATION BY:	PAGE
3	Counsel for Defendant	4
4	Counsel for Plaintiff	20
5	FURTHER EXAMINATION BY:	
6	Counsel for Defendant	25
7	DEPOSITION EXHIBITS:	
8	No. 1 - Representation Letter	6

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1 P R O C E E D I N G S

2 Whereupon,

3 KEVIN G. MCANANEY

4 was recalled as a witness and, having been  
5 previously duly sworn, was examined and testified  
6 further as follows:

7 EXAMINATION BY COUNSEL FOR DEFENDANT

8 CONTINUED

9 BY MR. LEWIS:

10 Q Give us your name, please.

11 A Kevin McAnaney.

12 Q Is it all right if I call you Kevin?

13 A Yes.

14 Q This is a continuation of a prior time  
15 we were here for your deposition. Do you  
16 understand that?

17 A Yes.

18 Q And as such, I understand that you had  
19 no contact with any lawyers, except for a  
20 paralegal in making corrections or making  
21 additions to the prior transcript of your earlier  
22 portion of this deposition; is that correct?

1           A     That is correct.

2           Q     And no one's talked to you or called you  
3     other than to schedule or something like that?

4           A     That's correct.

5           Q     One thing when you answer a question,  
6     I'm going to assume you understood the question?

7           A     Yes.

8           Q     If you don't understand the question,  
9     ask me to clarify it and I will attempt to do so.  
10    If I cut you off it'll be by mistake and you just  
11    tell me I've cut you off and I'll let you answer  
12    because I don't mean to, I just get excited. If  
13    I'm doing something you don't like, you say, Cam,  
14    I don't like what you're doing and I will attempt  
15    to stop doing that?

16          A     Okay.

17          Q     Is that fair?

18          A     That's fair.

19          Q     We were here last time and it turned out  
20    that you were engaged by two parties, that is Mr.  
21    Drakeford and Tuomey Hospital in a joint  
22    representation; is that correct?

1           A     That's correct.

2           Q     And looking at Exhibit Number 1.

3                     (Deposition Exhibit No. 1 was  
4                     marked for identification.)

5                     BY MR. LEWIS:

6           Q     Would be your joint representation  
7     letter; is that correct?

8           A     Yes.

9           Q     And I believe --

10                    MR. ACKER: Excuse me, Cam. Is this a  
11     new exhibit? Are you starting the numbering over?

12                    MR. LEWIS: Yes, I am.

13                    MR. ACKER: I just want to clarify for  
14     the record that we had this continuation of the  
15     deposition and we had Deposition Exhibit 1 and 2  
16     previously, so can we somehow differentiate this?

17                    MR. LEWIS: This will be Defendant's  
18     Exhibit 1.

19                    MR. ACKER: Thank you.

20                    BY MR. LEWIS:

21           Q     I believe you described your  
22     representation as you were a tie breaker?

1           A     Yes.

2           Q     And as a tie breaker there must have  
3     been a difference of opinion between the two  
4     people, tie breaker one had one position, the  
5     other one had another position and you were going  
6     to try to bring them together?

7           A     Well, I wouldn't say I was supposed to  
8     bring them together as a mediator. I was supposed  
9     to give them my opinion.

10          Q     Your assessment?

11          A     My assessment, yes.

12          Q     They were going to have your assessment  
13     because they couldn't agree?

14          A     That's how I understood it.

15          Q     And when they hired you they jointly  
16     hired you?

17          A     Yes.

18          Q     And they jointly hired you to give them  
19     an assessment over a question upon which they  
20     could not agree?

21          A     Or they had differences. I don't know  
22     whether they couldn't agree or not exactly, but

1       they clearly had different views.

2           Q     And they hired you to help them with --  
3       assess those positions?

4           A     I guess they did.

5           Q     You were given certain information to  
6       look at with reference to your engagement, were  
7       you not?

8           A     Yes, I was.

9           Q     You were given a contract that Dr.  
10      Drakeford was asked to sign?

11          A     I actually can't recall exactly what I  
12      was given now. I produced what I was given.

13          Q     You produced one contract. Did you see  
14      any other contract?

15          A     Not if that's all that was there.

16          Q     Did you ever see the mission of the  
17      hospital?

18          A     Not if it wasn't in those exhibits.

19          Q     Did you ever see any billings of the  
20      doctors that were going to be under these  
21      contracts to see how much they billed?

22          A     Only if they may have been in the



1       evaluations, they may have given some RVUs. I  
2       don't know. I can't recall.

3           Q       Are billings and RVUs the same thing?

4           A       No, they may have had billings in there  
5       as well.

6           Q       But you don't know?

7           A       I can't recall.

8           Q       You don't know if you looked at those or  
9       didn't look at them?

10          A       Well, if they were in the valuations I  
11       would have.

12          Q       Here today, you made an assessment. Did  
13       you make an assessment using any billings or not?

14          A       I made an assessment looking at the  
15       valuations.

16          Q       The valuations, that is the CEJKA  
17       evaluations?

18          A       Yes, in part, yup.

19          Q       Anything other than -- did you look at  
20       other than the CEJKA evaluations?

21          A       No, just the information they provided  
22       me and my general knowledge of the laws.

1           Q     All I'm asking is what information  
2           specific to this case did you look at. Did you  
3           look at anything other than the CEJKA information?

4           A     Yes.

5           Q     What?

6           A     I looked at whatever documents were  
7           provided to me by the parties.

8           Q     Do you have those with you?

9           A     No, I didn't bring them with me. I  
10          thought they would be here?

11          Q     We are under the impression that Exhibit  
12          Number 1 to the last deposition, Deposition  
13          Exhibit 1, was your file and what you were  
14          furnished was contained in there?

15          A     Yes, that looks to be the file.

16          Q     Were you given any billings?

17          A     Well, I don't know that I was directly,  
18          although the valuations included what they were  
19          making in their current practice verse what they  
20          would make under the proposal, so to that extent  
21          it included billings.

22          Q     Billings are different than collections?

1           A     I understand that.

2           Q     I want to know if you had anything in  
3     there that showed what they billed?

4           A     I will look. I don't see anything, only  
5     collections.

6           Q     Only collections. So we can, from our  
7     little examination, we can find that you did not  
8     look at billings, correct?

9           A     Correct.

10          Q     Now, look at what the doctors in Sumter  
11     actually made and monies, how much they got paid  
12     and how much did they make a year, is that --

13          A     Indirectly in the valuations they had  
14     what they were making, what their practices were  
15     making compared to what they would make under the  
16     projected.

17          Q     Them who? How many of them?

18          A     The ones that were given to me as  
19     examples. This is the opinion. These are for the  
20     three. These is for Dr. Drakeford, Dr. Ford and  
21     Dr. Stroebe.

22          Q     Anybody else?

1           A     Dr. Tate. And then they had another, I  
2     believe there were other valuations they had given  
3     me. I don't think so. I thought there were, but  
4     I don't see them.

5           Q     There were what?

6           A     I thought there were some similar things  
7     for some other physicians that we used as  
8     examples.

9           Q     There weren't?

10          A     Okay.

11          Q     You only looked at Dr. Drakeford's  
12     practice and what they furnished you about Dr.  
13     Drakeford, isn't that true, in his practice and  
14     his partners; isn't that right?

15          A     As I said, I can't recall. I don't see  
16     it here flipping through. I thought there was  
17     actually some other -- another practice that they  
18     showed me that I was not to share.

19          Q     You didn't -- it's not in your documents  
20     that you say was your file?

21          A     I don't see it. It's sort of hard to  
22     flip through.

1           Q     I want you to look. Take all the time  
2     you want. I want you to find me where you say  
3     that you saw some other practice, because we  
4     hadn't found it?

5           A     Okay. No.

6           Q     No what?

7           A     No, I did not look at -- I didn't have  
8     any other billing information other than -- or  
9     collection information, practice information,  
10    other than for the Drakeford practice.

11          Q     You had no billing information for them  
12    and you only had collecting information for the  
13    Drakeford practice, right?

14          A     Yes.

15          Q     And you only looked at -- that was one  
16    specialty, right, they were orthopaedic surgeons;  
17    is that what they were?

18          A     Yes.

19          Q     So you looked at no other specialty?

20          A     No.

21          Q     And they did not sign a contract, do you  
22    know that?

1           A     I think I do.

2           Q     And so it's fair to state that you  
3     looked at no contract that was signed?

4           A     I think that's correct.

5           Q     Did you ever hear the term patient mix?

6           A     Yes.

7           Q     Did you look at the patient mix of  
8     Drakeford's group?

9           A     No.

10          Q     Did you look at the patient mix of any  
11     group?

12          A     No.

13          Q     Do you know what charity cases are?

14          A     Yes.

15          Q     Did you look at the charity cases that  
16     the doctors would do?

17          A     No.

18          Q     Not Drakeford or anybody else?

19          A     No.

20          Q     Did you look and see how many different  
21     specialty groups, like how many orthopaedic  
22     surgeon groups, how many general surgery -- how

1 many different groups were in Sumter?

2 A No.

3 Q Did you look to see what would happen  
4 if, say, the thoracic surgeons would withdraw from  
5 Tuomey Hospital?

6 A I don't understand that question.

7 Q Let's say they didn't want to work there  
8 anymore and they left, what would happen to Tuomey  
9 Hospital if they had no thoracic surgeons? Do you  
10 know what happened?

11 A No.

12 Q You don't know what happened to Tuomey  
13 Hospital if they lost some of these doctors, do  
14 you?

15 A No.

16 Q Do you know what tri-care is?

17 A Yes.

18 Q Do you know how much tri-care Tuomey  
19 Hospital does?

20 A No.

21 Q Do you know if tri-care's important to  
22 the area because of Shaw Air Force Base?

1           A     It could be.

2           Q     Did you look at that?

3           A     No.

4           Q     I think you communicated with Mr. Smith  
5     and Mr. Houston; is that right?

6           A     Yes.

7           Q     Nobody else?

8           A     No, not that I recall. I don't believe  
9     so.

10          Q     And what I think your assessment, as I  
11     read your assessment, I want to make sure I got  
12     that down because that's what we're here for, your  
13     assessment. You said that what you saw in that  
14     little group of documents, Exhibit Number 1, to  
15     the government would raise questions?

16          A     Yes.

17          Q     And another place you said was raise  
18     concerns, the government would look at, it might  
19     raise concerns with the government?

20          A     Yes.

21          Q     And another time you said that it would  
22     raise a red flag, but of course that doesn't end



1 the matter?

2 A Correct.

3 Q And so the sum total of what you told  
4 them in your assessment was that the government  
5 might look askew at these arrangement that you  
6 were given in the one contract for the one  
7 specialty?

8 A That's correct.

9 Q And that was the end of your assignment?

10 A That's correct.

11 Q You also said that you don't opine on  
12 the fair market value of a question?

13 A That's correct.

14 Q And you call them -- those are what they  
15 call valuation consultants?

16 A I think so.

17 Q That's what I think, too. We know that  
18 that's what we're talking about now, that those  
19 are the valuation consultants. Have you heard of  
20 the Pinnacle Health Care Group valuation that do  
21 those valuations?

22 A I may have. It doesn't ring a bell.

1 Q How about Home, LLC?

2 A I don't think I've ever heard them, no.

3 Q How about Health Care Appraisers,  
4 Incorporated?

5 A That sounds familiar.

6 Q How about Clark Consulting?

7 A That also sounds familiar.

8 Q How about Integrated Health Care  
9 Strategies?

10 A Yes.

11 Q The Well Springs Group?

12 A Yes.

13 Q How about Moore Gates, or Gates Moore?

14 A Doesn't ring a bell.

15 Q How about Valuation Management Group?

16 A Perhaps, they all sort of sound the  
17 same.

18 Q That's right. But you did specifically  
19 say you knew the Wells Spring Group and the  
20 Integrated Health Care Strategies?

21 A Yes.

22 Q Are those two groups okay as far as you

1 know?

2 A As far as I know.

3 Q And then the other ones, I guess,  
4 Pinnacle Health Care Group you don't know whether  
5 they're good or bad because you don't remember  
6 hearing of them?

7 A I think I've seen the name. I don't  
8 know that I've ever come across their work.

9 Q So you don't know whether -- you heard  
10 nothing bad about them anyway, right?

11 A No.

12 Q Or Home, LLC you just had never heard  
13 of?

14 A Correct.

15 Q And the Health Care Appraisers, Inc. you  
16 hadn't heard anything bad about them?

17 A Correct.

18 Q And Moore Gates or Gates Moore you never  
19 heard of?

20 A Yes.

21 Q And the Valuation Management Group you  
22 just never heard anything bad about them, you just

1 don't remember?

2 A I don't think so. I'm not sure I've  
3 heard the name or not.

4 MR. LEWIS: Can I take a break a minute?

5 (Recess)

6 MR. LEWIS: Norman, got any questions?

7 MR. ACKER: Are you done?

8 MR. LEWIS: Yeah.

9 MR. ACKER: Yeah.

10 (Recess)

11 EXAMINATION BY COUNSEL FOR PLAINTIFF

12 BY MR. ACKER:

13 Q Mr. McAnaney, as Mr. Lewis pointed out,  
14 this is a continuation of the deposition that was  
15 taken earlier. Do you recall the initial part of  
16 this deposition?

17 A Yes.

18 Q And you were shown a few minutes ago  
19 Exhibit 1 from that earlier part of the deposition  
20 and you looked through it quickly to see if you  
21 could find reference to any other physicians that  
22 you had reviewed their billing or collection

1 records for?

2 A Yes.

3 Q Let me draw your attention to pages  
4 006-123 through 006-127 of the McAnaney Deposition  
5 Exhibit 1?

6 A Yes.

7 Q See if this -- take your time in looking  
8 through that and see if that refreshes your  
9 recollection about any other physicians that you  
10 looked at?

11 A Yes, that's the document to which I had  
12 thought I had seen, but when I reviewed it it  
13 doesn't have detailed billing information.

14 Q But this does give you some indication  
15 that there were other physicians with whom Tuomey  
16 had proposed or actual part-time employment  
17 agreements other than the orthopaedics?

18 MR. LEWIS: Object to the form.

19 THE WITNESS: Yes, I knew there were  
20 other contracts.

21 BY MR. ACKER:

22 Q You spoke to Mr. Smith and Mr. Houston

1 on June 22nd of 2005; is that correct?

2 A I need to review my time sheet. Yes.

3 Q And after you gave your assessment or  
4 your opinion about Dr. Drakeford's proposed  
5 contract, did Tuomey ever ask you to give any  
6 opinions about any other of the contracts?

7 MR. LEWIS: Object to the form.

8 THE WITNESS: No.

9 BY MR. ACKER:

10 Q Mr. Lewis asked you a series of  
11 questions a few minutes ago about what information  
12 you did not have when you gave your opinion. Did  
13 Tuomey have the right to give you anything it  
14 considered important?

15 MR. LEWIS: Object to the form.

16 THE WITNESS: Yes.

17 BY MR. ACKER:

18 Q And did you receive information from  
19 Tuomey?

20 A Yes.

21 Q And did Tuomey ever tell you they didn't  
22 think you had all the necessary information to

1       make your assessment?

2               MR. LEWIS: Object to the form.

3               THE WITNESS: Not that I recall.

4               BY MR. ACKER:

5           Q     So to your knowledge, did Tuomey give  
6       you everything that it considered important?

7               MR. LEWIS: Object to the form. You  
8       have no idea what Tuomey thinks.

9               THE WITNESS: I believe so.

10              BY MR. ACKER:

11           Q     After the June 22nd, 2005 conference  
12       call that you had with Mr. Houston and Mr. Smith,  
13       did Tuomey ever come back and say here's more  
14       information that we want you to have?

15              MR. LEWIS: Object to the form.

16              THE WITNESS: No.

17              BY MR. ACKER:

18           Q     Did they ever give you any more  
19       information after June 22nd?

20           A     Well, I think we had a subsequent phone  
21       call about the joint venture arrangement.

22           Q     That was on June 23rd?

1           A     June 23rd. I think after that I didn't  
2     have any further substantive conversation.

3           Q     Did you ever receive a request from  
4     anyone to put your opinion in writing?

5           MR. LEWIS: Object to the form.

6           THE WITNESS: I can't recall if I was  
7     specifically asked to put it in -- I do recall a  
8     conversation, I believe, with Greg Smith that  
9     indicated that the Tuomey board might want  
10    something in writing.

11          BY MR. ACKER:

12          Q     And did you put your opinion in writing?

13          MR. LEWIS: Object to the form.

14          THE WITNESS: No.

15          BY MR. ACKER:

16          Q     And why not?

17          A     Because I was subsequently contacted by  
18     Tim Houston and told not to put anything in  
19     writing without his agreement and they did not  
20     agree. I forget exactly, sent me a letter I  
21     believe.

22          Q     What, if anything, did Tim Houston tell



1       you as to the reason why you should not put your  
2       opinion in writing?

3           A       He didn't.

4           MR. ACKER: I have no other questions.

5           MR. LEWIS: I just have one follow-up  
6       question.

7           FURTHER EXAMINATION BY COUNSEL FOR  
8       DEFENDANT

9           BY MR. LEWIS:

10          Q       Over my objection, the government keeps  
11       saying your opinion, but you specifically said you  
12       were not to give your -- to opine but to give an  
13       assessment?

14          A       Right. I was not giving -- I was never  
15       asked and specifically not to give an opinion as  
16       to the legality of the arrangement.

17          Q       You were -- it was an assessment?

18          A       It was an assessment.

19          MR. LEWIS: That's all I wanted. Thank  
20       you very much. Nothing further.

21                   (Whereupon, at 10:45 a.m., the  
22       deposition of KEVIN G. MCANANEY was

1 adjourned.)

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1 ERRATA SHEET FOR THE DEPOSITION OF

2 \_\_\_\_\_

3 Case Name: \_\_\_\_\_

4 CORRECTIONS

Pg1.	Ln.	Now Reads	Should Read	Reasons:
5				

8 \_\_\_\_\_

9. \_\_\_\_\_

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11 \_\_\_\_\_

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21 Reviewed by: Date:

1                   To the Witness:

2                   Please note any errors and the  
3           corrections thereof, on this errata sheet. Any  
4           change or correction should have a reason. It may  
5           be a general reason, such as "To correct  
6           stenographic error," or "To clarify the record,"  
7           or "To conform with the facts." Once you have  
8           completed the sheet, signed and dated it, return  
9           the sheet to your attorney, not to the court  
10          reporting agency. Attorneys should exchange  
11          errata sheets among the parties.

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1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, Carleton J. Anderson, III do hereby certify  
4 that the forgoing electronic file when originally  
5 transmitted was reduced to text at my direction;  
6 that said transcript is a true record of the  
7 proceedings therein referenced; that I am neither  
8 counsel for, related to, nor employed by any of  
9 the parties to the action in which these  
10 proceedings were taken; and, furthermore, that I  
11 am neither a relative or employee of any attorney  
12 or counsel employed by the parties hereto, nor  
13 financially or otherwise interested in the outcome  
14 of this action.

15 /s/Carleton J. Anderson, III

16 Notary Public # 351998

17 in and for the Commonwealth of Virginia

18 My Commission Expires: November 30, 2008

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